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OFFICE OF PETITIONS

In re Application of :
Arthur M. Tofani, Jr. et al :
Application No. 09/689,459 : DECISION GRANTING PETITION
Filed: October 12, 2000 : UNDER 37 CFR 1.137(b)
Attorney Docket No. E-1902 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed July 20, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed June 6, 2003, which set a shortened statutory period for reply of three (3) months. A two month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on November 7, 2003.

The petition is accompanied by the reply in the form of a Continued Prosecution Application (CPA) under 37 CFR 1.53(d), albeit the petition itself references the filing of a "Request for Continued Examination." However, the CPA practice was eliminated effective July 14, 2003 as to plant and utility applications. See "Elimination of Continued Prosecution Application Practice as to Utility and Plant Applications; Final Rule," 68 FR 32376 (May 30, 2003). Since the instant application has a filing date after June 8, 1995, the improper CPA is being treated as a Request for Continued Examination (RCE) under 37 CFR 1.114 and the request to enter the unentered amendment filed on November 5, 2003 will be considered the submission required by 37 CFR 1.114.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination and submission pursuant to 37 CFR 1.114; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of June 6, 2003 is accepted as having been unintentionally delayed.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account as authorized.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

The application file is being forwarded to Technology Center AU 3643 for processing of the RCE filed July 20, 2004 and consideration of the previously filed unentered amendment received November 10, 2003 (certificate of mailing date of November 5, 2003).

Frances Hicks
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